IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RFA No. 54 of 2002

Reserved on : 13.7.2007

Date of Decision : July 24, 2007

State of H. P. …Appellant.

Versus:

Satish Kumar Goel …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant : Mr. C. B. Singh, Deputy Advocate General.

For the respondent. Mr. Suneet Goel, Advocate.

Sanjay Karol, J.

The present appeal is directed against the judgment and decree dated 3.1.2002 passed by the learned District Judge, Kinnaur Civil Division at Rampur Bushahr, H.P., in Civil Suit No. 5 of 2000 titled as State of H.P. v. Satish Kumar Goel, dismissing the suit of the plaintiff.

For the purposes of convenience, the parties hereinafter referred to as the 'plaintiff/appellant' and the 'defendant/respondent'.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Plaintiff filed a suit for recovery of a sum of Rs.2,85,,050/- on the premise that the Public Works Department (PWD) of the Govt. of Himachal Pradesh had awarded work of Rs.2,85,050/- to the defendant for construction of work of Leo bridge on Spiti river at Leo. Defendant was paid a sum of Rs.23,22,478/- between 15.9.1987 to 21.11.1988 but, however, the work could not be completed within the stipulated time and satisfaction of the plaintiff. The dispute raised by the plaintiff was referred to arbitration who dismissed the claim of the defendants and passed an order for forfeiture of security of Rupees one lac belonging to the defendant. In terms of the agreement, the work was to be completed within six months from the date of allotment i.e. 28.3.1987 and for failure thereof, the defendant was liable to pay compensation of 10% of the tendered amount. Inspite of the plaintiff's issuing a notice for recovery of the same, the amount was not paid. Hence, the suit was instituted on 15.9.2000.

In the written statement, apart from the preliminary objections with regard to the competency of the person to institute the suit, on merits, the defendant has admitted having carried out the awarded work in terms thereof allotment letter dated 28.3.1987. The defendant further admitted having received the amount but has clarified that the work was completed within the stipulated period as the bridge was inaugurated by the Hon'ble Chief Minister, State of Himachal

Pradesh on 13.11.1988. The competency of the Executive Engineer to levy penalty of 10% is also admitted.

Based on the pleadings of the parties, the Court below framed the following issues:-

"1. Whether the defendant did not complete the work of construction of the suspension bridge at Leo over Spiti river? …OPP

2. If issue No.1 is proved, whether the plaintiff is entitled to recover the suit amount from the defendant? …..OPP

3. Whether the S.E. is not competent to institute the suit? ……..OPD

4. Whether the Executive Engineer was not competent to impose penalty of Rs.2,85,050/- on the defendant? …OPD

5. Whether the plaintiff is estopped form instituting the suit by its act and conduct? …OPD

6. Relief."

Issues No. 1 to 4 were decided in negative and issue No.5 was decided in affirmative but issue No.6 pertaining to the relief as prayed for was rejected. Since the defendant has not assailed the findings of the Court below on issues No. 3 & 4, therefore, I am not going into the same.

In all, six witnesses were examined by the plaintiff and three witnesses by the defendant.

Shri S. K. Kamal (PW-4) Executive Engineer, HPPWD, Kalpa Division of the plaintiff-State has stated that the work was allotted to the defendant vide Ext.PW-4/B dated 28.3.1987 and in terms thereof, the same was to be completed

within six months. He has, however, stated that even though the work was started by the defendant, the same was abandoned and the remaining work was got done departmentally. He has, however, admitted that the work site falls within the snow zone and the work had to be suspended for three months on account of snow. Shri A. K. Bhardwaj (PW-5) Executive Engineer posted between the year 1992 to 1994 has stated that the bridge, on his inspection, was found not only to be incomplete but unsafe for traffic and the defendant was requested to rectify the defects and complete the work. He has, however, admitted that the matter had been referred to the Superintending Engineer vide Ext. PW-5/B on 11.12.1992 in which he had clearly stated the Department had been unilaterally allowing extension of time for completion of work in question in favour of the defendant and lastly such extension was granted on 31.3.1991. Shri S. R. Negi (PW-6) EE, has also stated to the said effect. Shri R. L. Negi (PW-2) E.E., HPPWD, Kalpa Division has stated that while posted between June, 1990 to March 1992, on inspection of the bridge, he found the same not to be laid as per specification and having numerous defects in the structure. He had directed the defendant in terms of letter dated 25.9.1990 Ext.PW-2/A to rectify the same. Shri S. B. Thakur (PW-3) EE, HPPWD, Kalpa Division posted between September, 1989 to June, 1990 has stated that on inspection of the bridge, he found that the defects were not removed.

Shri U. S. Chauhan (DW-2) working as E.E. between June, 1988 to September, 1989 has stated that the defendant had taken up the work of construction of the bridge in hand and 90% of the work was completed before June, 1988 and the remaining work was completed to the satisfaction of the plaintiff and the bridge was inaugurated by the Hon'ble Chief Minister on 13.11.1988 and the defendant's security amounting to Rupees one lac was released on 14.9.1989. In his, chief examination he had stated as follows:-

> "…….. When I taken over as Executive Engineer, HPPWD, Kalpa Division in June 1988, 90% of the work of construction of the bridge had been completed by the defendant and such completion was to the satisfaction of the Department. The defendant had completed the remaining 10% of the work of this bridge during my tenure and I had inspected this bridge and had found that the bridge had been constructed as per design and specification supplied to the defendant by the Department. The work was completed as per the requirement of the Department and thereafter the Superintending Engineer and the Chief Engineer had inspected this bridge and had found the same in order. It was thereafter that the then Chief Minister on 13.11.1988 had inaugurated this bridge in the presence of large number of public and men and officers of HPPWD. I had released the security of the defendant relating to this bridge on 19.11.1988 since the work stood completed to the satisfaction of the Department."

Based on the entire material, the Court below has observed as under:-

> "Leo bridge in question had 215 feet span. It was stiffened suspension bridge.. DW-2 U. S. Chauhan, had been Executive Engineer w.e.f. June, 1988 to September,1989. DW-2 had cleared 3 bills amounting to Rs.11,80,000/- approximate of the defendant. Admittedly, the Junior Engineer and the Assistant Engineer in charge of the work had certified the completion of work as per specification and thereafter DW-2 had released payment of 3 bills amounting to Rs.11,80,000/- approximate in favour of the defendant. Also the work in question had been carried out much before the release of payment of 3 bills by DW-2."

The statements of the witnesses PW-2, PW-3 & PW-4 are totally unreliable and contradictory. Whereas PW-3 has mentioned that only minor defects in the bridge were found in November, 1989, PW-4 has stated that major defects were pointed out but were not rectified by the defendant. Further, PW-2 who was in charge at that time has stated that the Superintending Engineer and the Chief Engineer had inspected the bridge and only thereafter the Hon'ble Chief Minister had inaugurated the same on 13.11.1988. From the statement of the witness, it emerges that the work allotted on 28.3.1987 was to be completed within six months, however, the area where the bridge was to be constructed falling within the snow zone, the work had to be stopped for a period of three months and the extensions were unilaterally given to the defendant for

completion of the work. Certainly, the Executive Engineer and the Assistant Engineer in charge of the work had been aware of the circumstances under which the construction of the work was to be carried out. Finally the inauguration of the bridge took place on 13.11.1988 by the Hon'ble Chief Minister. Defects in the same were noticed according to the statement of PW-3 in November, 1989, which is also after the security of Rupees one lac deposited by the defendant was released on 14.9.1989. The Court below has come to the conclusion that simply because certain defects were noticed after a period of one and half year for the completion of the bridge, it cannot be said that the defendant had abandoned the job. The defects, in any case, were minor and which would not by no stretch of imagination can be construed that the defendant had left the work incomplete particularly when it has come on record that extensions were given.

There is no evidence on record to corroborate the statements of the plaintiff's witnesses that the work was got executed departmentally. No documents, record or report have been placed on record by the plaintiff. Similarly, there is no document on record to show as to what were the material defects and as to whether the same have resulted due to faulty designs and specifications. Even now when the matter was heard in the Court, no grievance with regard to the same was made.

Learned counsel for the defendant has relied upon ***Rambal Company*** vs. ***Kerala State Science & Technology Museum*** (2000(3) Arb.LR 212 (Kerala) to contend that the plaintiff cannot be permitted to remain silent and then suddenly rake up the issue after a period of one and half year from the date of completion of work and after the work was inaugurated by the Hon'ble Chief Minister of Himachal Pradesh.

For all the aforesaid reasons, I find no illegality or infirmity in the impugned judgment and decree dated 3.1.2002 passed by the learned District Judge, Kinnaur Civil Division at Rampur Bushahr, H.P., in Civil Suit No. 5 of 2000 titled as State of H. P. v. Satish Kumar Goel. Consequently, the appeal is dismissed.

(Sanjay Karol),
Judge.

July 24, 2007.
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